

§ 1404.6

29 CFR Ch. XII (7–1–11 Edition)

unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters.

(2) This definition of advocate also includes a person who is directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm. Individuals engaged only in joint education or training or other non-adversarial activities will not be deemed as advocates.

(d) *Listing on roster, removal.* Listing on the Roster shall be by decision of the Director of FMCS based upon the recommendations of the Board or upon the Director's own initiative. The Board may recommend for removal, and the Director may remove, any person listed on the Roster for violation of this part or of the Code of Professional Responsibility. FMCS will provide to the affected arbitrator written notice of removal from the Roster. Complaints about arbitrators should be in writing and sent to the Director of OAS. The complaint should cite the specific section of the Code or the FMCS rule the arbitrator has allegedly violated. The following criteria shall be a basis for the Board to recommend and/or the Director to initiate a member's removal from the Roster:

(1) No longer meets the criteria for admission;

(2) Has become an advocate as defined in paragraph (c) of this section;

(3) Has been repeatedly or flagrantly delinquent in submitting awards;

(4) Has refused to make reasonable and periodic reports in a timely manner to FMCS, as required in subpart C of this part, concerning activities pertaining to arbitration;

(5) Has been the subject of a complaint by parties who use FMCS services and the Board, after appropriate inquiry, concludes that cause for removal has been shown;

(6) Is determined to be unacceptable to the parties who use FMCS arbitration services. Such a determination of

unacceptability may be based on FMCS records which show the number of times the arbitrator's name has been proposed to the parties and the number of times he or she has been selected. Such cases will be reviewed for extenuating circumstances, such as length of time on the Roster or prior history;

(7) Has been in an inactive status pursuant to §1404.6 for longer than two years and has not paid the annual listing fee.

(e) *Procedure for Removal.* Prior to any recommendation by the Board to remove an arbitrator from the Roster, the Board shall conduct an inquiry into the facts of any such recommended removal. When the Board recommends removal of an arbitrator, it shall send the arbitrator a written notice. This notice shall inform the arbitrator of the Board's recommendation and the basis for it, and that he or she has 60 days from the date of such notice to submit a written response or information showing why the arbitrator should not be removed. When the Director removes an arbitrator from the Roster, he or she shall inform the arbitrator of this in writing, stating the effective date of the removal and the length of time of the removal if it is not indefinite. An arbitrator so removed may seek reinstatement to the Roster by making written application to the Director no earlier than two years after the effective date of his or her removal.

(f) *Suspension.* The director of OAS may suspend for a period not to exceed 180 days any person listed on the Roster who has violated any of the criteria in paragraph (d) of this section. Arbitrators shall be promptly notified of a suspension. The arbitrator may appeal a suspension to the Board, which shall make a recommendation to the Director of FMCS. The decision of the Director of FMCS shall constitute the final action of the agency.

[62 FR 34171, June 25, 1997, as amended at 70 FR 76397, Dec. 27, 2005; 75 FR 30705, June 2, 2010]

§ 1404.6 Inactive status.

(a) A member of the Roster who continues to meet the criteria for listing on the Roster may request that he or she be put in an inactive status on a

temporary basis because of ill health, vacation, schedule or other reasons.

(b) Arbitrators whose schedules do not permit cases to be heard within six months of assignment are encouraged to make themselves inactive temporarily until their caseload permits the earlier scheduling of cases.

(c) An arbitrator can remain on inactive status without paying any annual listing fee for a period of two (2) years. If an arbitrator is on inactive status for longer than two (2) years, the arbitrator will be removed from the Roster unless he or she pays the annual listing fee.

[75 FR 30705, June 2, 2010]

§ 1404.7 Listing fee.

All arbitrators will be required to pay an annual fee for listing on the Roster, as set forth in the appendix to this part.

Subpart C—Procedures for Arbitration Services

§ 1404.8 Freedom of choice.

Nothing contained in this part should be construed to limit the rights of parties who use FMCS arbitration services to jointly select any arbitrator or arbitration procedure acceptable to them. Once a request is made to OAS, all parties are subject to the procedures contained in this part.

§ 1404.9 Procedures for requesting arbitration lists and panels.

(a) The Office of Arbitration Services (OAS) has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Federal Mediation and Conciliation Service, Office of Arbitration Services, 2100 K Street, NW., Washington, DC 20427.

(b) The OAS will refer a panel of arbitrators to the parties upon request. The parties are encouraged to make joint requests. In the event, however, that the request is made by only one party, the OAS will submit a panel of arbitrators. However, the issuance of a panel—pursuant to either joint or unilateral request—is nothing more than a response to a request. It does not signify the adoption of any position by

the FMCS regarding the arbitrability of any dispute or the terms of the parties' contract.

(c) As an alternative to a request for a panel of names, OAS will, upon written request, submit a list of all arbitrators and their biographical sketches from a designated geographical area. The parties may then select and deal directly with an arbitrator of their choice, with no further involvement of FMCS with the parties or the arbitrator. The parties may also request FMCS to make a direct appointment of their selection. In such a situation, a case number will be assigned.

(d) The OAS reserves the right to decline to submit a panel or to make an appointment of an arbitrator if the request submitted is overly burdensome or otherwise impracticable. The OAS, in such circumstances, may refer the parties to an FMCS mediator to help in the design of an alternative solution. The OAS may also decline to service any request from a party based on the party's non-payment of arbitrator fees or other behavior that constrains the spirit or operation of the arbitration process.

(e) The parties are required to use the Request for Arbitration Panel (Form R-43), which has been prepared by the OAS and is available upon request to the Federal Mediation and Conciliation Service, Office of Arbitration Services, Washington, DC 20427, or by calling (202) 606-5111. Form R-43 is also available on the FMCS Internet Web site, <http://www.fmcs.gov>. Requests that do not contain all required information requested on Form R-43 in typewritten form or legible handwriting may be rejected.

(f) Parties may submit requests for any standard geographical arbitration panels electronically by accessing the agency's Internet Web site, <http://www.fmcs.gov>, and receive panels via e-mail, fax or mail. Panel requests that contain certain special requirements may not be processed via the agency's internet system. Parties must provide all required information and must pay the cost of such panels using methods of payment that are accepted by the agency.

(g) The OAS will charge a nominal fee for all requests for lists, panels, and